

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

CARMEN W. KANNER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2348

Decision No. CU-5409

AMENDED PROPOSED DECISION

Under date of July 29, 1970, the Commission issued its Proposed Decision on this claim certifying a loss in favor of claimant in the amount of \$31,346.61 plus interest. The amount allowed represented \$26,666.66 for 6.270 caballerias of land, known as Lot Number One of the Cardona farm in San Luis, Oriente, Cuba; and \$4,679.95 for 7.020 caballerias of land in Caney, Oriente, Cuba. Subsequently, claimant submitted additional evidence concerning the value of Lot Number One.

Upon consideration of the new evidence, it is

ORDERED that the Proposed Decision be amended as follows:

The new evidence establishes that in May 1957 the manager of a sugar mill in San Luis, Oriente, Cuba, had made a firm offer to claimant to purchase Lot Number One for \$62,700.00 at the rate of \$10,000.00 per caballeria. It appears from the record that claimant rejected the offer. On the basis of the entire record, the Commission now finds that Lot Number One had a value of \$62,700.00 on December 6, 1961, the date of loss.

Accordingly, the Certification of Loss in the Proposed Decision is set aside, and the following Certification of Loss will be entered, and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that CARMEN W. KANNER suffered a loss as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Sixty-Seven Thousand Three Hundred Seventy-Nine Dollars and Ninety-Five Cents (\$67,379.95) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Amended
Proposed Decision of the
Commission

max 17 1971

Paul S. Garlock
Paul S. Garlock, Chairman
Theodore J. Ellis
Theodore J. Ellis, Secretary

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Amended Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 591.5(e) and (g), as amended (1970).)

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

CARMEN W. KANNER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2348

Decision No. CU 5409

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$81,930.00, was presented by CARMEN W. KANNER based upon the asserted loss of certain real and personal property in Cuba. Claimant has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The record includes a copy of a Deed of Donation, dated March 14, 1953, executed by claimant's mother and filed with the land register authorities in Santiago de Cuba, Oriente Province, Cuba. On the basis of the foregoing, the Commission finds that claimant acquired on March 14, 1953: (a) certain land, having an area of 6.270 caballerias, known as Lot Number One of the Cardona farm in San Luis, Oriente, Cuba; (b) an interest equivalent to 7.020 caballerias of land representing an interest in property known as Santa Maria and San Prudencio in Caney, Oriente, Cuba. Although claimant's mother, a national of the United States at all pertinent times, retained a life estate in the property, this interest terminated upon the death of claimant's mother on July 25, 1961 prior to the date of loss.

On December 6, 1961, the Cuban Government published Law 989, which confiscated all real property, personal property, rights, shares, stocks, bonds, securities and bank accounts of persons who had left the country. The Commission finds that this law applied to claimant, who had left Cuba prior to that date, and that her interests in the properties claimed were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. The Commission further finds that as a result of said action claimant sustained a loss of property within the meaning of Title V of the Act. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Claimant asserts the following values of real property:

Sugar plantation of about 7 caballerias at \$10,000.00 per caballeria	\$70,000.00
Cattle ranch of 7.20 caballerias at \$1,500.00 per caballeria	<u>10,530.00</u>
	<u>\$80,530.00</u>

In support thereof, claimant has submitted an affidavit, dated September 9, 1967, from Baldomero Casas Fernandez. Affiant states that he was President and General Manager of a sugar company in San Luis, Oriente Province; that he was well acquainted with claimant's property consisting of 6.270 caballerias; and that the value thereof in 1959 was \$10,000.00 per caballeria or \$62,700.00, which he would have been willing to pay for the property.

The affiant does not state that he ever made such an offer to claimant or that anyone else offered that amount for claimant's property. Moreover, it is noted from the Deed of Donation that claimant's property and her sister's property, Lot Number Two of the Cardona farm which is the subject of Claim No. CU-0046, were similar although not identical. Claimant's sister also owned 6.270 caballerias of land in the Cardona farm and her property also contained a sugar plantation. The amount claimed by claimant's sister is the amount set forth in the Deed of Donation as the value thereof.

Claimant has submitted no other evidence to support her asserted valuations of her two pieces of real property. Upon consideration of the entire record and in the absence of more persuasive evidence, the Commission finds that the valuations most appropriate to the properties and equitable to the

claimant are those appearing in the Deed of Donation. Accordingly, the Commission finds that claimant's properties had the following values on December 6, 1961, the date of loss:

Lot Number One with an area of 6.270 caballerias	\$26,666.66
7.020 caballerias of land in the Santa Maria and San Prudencio property, having a total area of 45 caballerias and valued at \$30,000.00, or \$666.66 per caballeria	<u>4,679.95</u>
	\$31,346.61

Claimant also asserts the loss of a 1/5 interest in certain personal property consisting of heavy duty scales, a loading crane and a railroad siding switch for loading sugar cane, which she values at \$1,400.00. No evidence whatsoever was submitted in support of this portion of the claim.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1969).)

The Commission finds that claimant has failed to sustain the burden of proof with respect to her claim for the loss of an interest in personal property. Accordingly, the portion of the claim based on personal property is denied.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

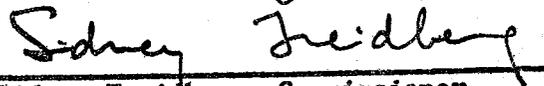
The Commission certifies that CARMEN W. KANNER suffered a loss as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-one Thousand Three Hundred Forty-six Dollars and Sixty-one Cents (\$31,346.61) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

JUL 29 1970


Lyle S. Carlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

CU-2348